

1 what you're going to learn from that except
2 how maybe the procedures. And Mr. Schonman
3 did give you a website as to how to get
4 information, documents on that case.

5 If you're looking for that kind of
6 information about procedurally how to go
7 forward on these kinds of things or how
8 they've been done in the past, he's right.
9 He's helping you out, and you should do your
10 own research.

11 But if you're talking about
12 something you want to know specifically --
13 other cases where this has been charged -- and
14 I'm not going to say not necessarily the
15 narrow facts of this case, but where some kind
16 of sexual misconduct has been used as a basis
17 for -- I'll tell you right now, I have not
18 been involved in litigating any one of the
19 cases such as that.

20 I know there have been a couple of
21 cases around where something like that has
22 been alleged, and relatively recently. And

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1 they defaulted.

2 Am I overstating myself, Mr.
3 Schonman?

4 MR. SCHONMAN: No, sir.

5 ADMIN. JUDGE SIPPEL: So those
6 cases aren't going to be of any interest to
7 you.

8 I'll leave this with Mr. Schonman
9 to think about it. I mean, any other case --
10 I used Mitnick as an example. That's M-I-T --

11 MR. SCHONMAN: N-I-C-K.

12 ADMIN. JUDGE SIPPEL: N-I-C-K.
13 Mitnick -- for the report.

14 I mean, these cases are so unique
15 to themselves in terms of how they're handled
16 by counsel, in terms of what we're looking
17 for. And I heard that case myself.

18 And I know that Mr. Mitnick's
19 testimony was critical, absolutely critical.
20 But there were a lot of other circumstances
21 that were considered.

22 But that's all been laid out in

1 the decision. What other documents you get,
2 fine, from that website.

3 Does that answer your concern?

4 MR. MARSHALL: Well, Your Honor,
5 we're interested in getting the identification
6 of other cases in which sexual misconduct has
7 been, as you say, our focus is on cases
8 alleging sexual misconduct as a
9 disqualification for holding an amateur radio
10 license.

11 And one reason we want them is to
12 conduct factual research. It's not simply
13 legal research. I'd like to be able to call
14 the lawyers who've handled those other cases
15 and learn from them about the evidence on both
16 sides and get some feel for what makes a
17 difference in how these cases turn out, both
18 in terms of developing my own case and in
19 terms of presenting it at the hearing.

20 ADMIN. JUDGE SIPPEL: But even the
21 cases where they dropped the application?

22 MR. MARSHALL: Well, I don't know

1 how to set a cut-off point.

2 If the case was worked up by the
3 lawyer for the licensee, then I'd like to talk
4 to that lawyer.

5 ADMIN. JUDGE SIPPEL: The one's
6 that I've been concerned with, a lawyer never
7 showed up. I mean, not that they didn't show
8 up. They never filed a notice of appearance.

9 MR. MARSHALL: Right. Well, I
10 wouldn't learn anything from a case where the
11 licensee gave up right off the bat. But a
12 case where there was significant development
13 of the case by counsel, that would be
14 educational to me.

15 And I don't know whether if we
16 looked at all the cases where the Enforcement
17 Bureau had sought to revoke a license on this
18 basis, I don't know. Are we looking at 200
19 cases a year, or two cases per year, or
20 somewhere in between? I don't know.

21 I don't want to put the Bureau to
22 an unreasonable burden in listing cases,

1 partly because I'm not going to put myself
2 through an unreasonable burden. If there were
3 200 lawyers, I wouldn't call 200 lawyers. But
4 I would like to have a substantial number of
5 these cases for purposes of that kind of
6 factual research.

7 ADMIN. JUDGE SIPPEL: Well, again
8 as I say, forget about the other cases.
9 You've got Mitnick that you were looking for.

10 I would be open to your continuing
11 a request for cases that at least got beyond
12 the notice of appearance stages alleging
13 sexual misconduct, subject to listening to
14 what Bureau counsel, Mr. Schonman and Mr.
15 Knowles-Kellett, may say.

16 Go ahead. One thing at a time
17 though.

18 MR. SCHONMAN: Your Honor, as far
19 as I'm concerned, the nature of the case
20 doesn't matter to me, whether the individual
21 made an appearance in a particular case, or
22 didn't make an appearance, or it went through

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1 a full trial.

2 The fact of the matter is the
3 Commission's decisions and all the pleadings
4 filed in a docketed proceeding are an open
5 book available to the public with appropriate
6 legal research. All Mr. Titus has to do is do
7 a Westlaw search, and plug in his words. Or
8 he can go through every order that's been
9 issued by the Commission, or by the
10 Enforcement Bureau. He can go into the
11 Commission's website and look at every
12 document that's been filed in every docketed
13 proceeding. It's publicly available. It's
14 legal research.

15 I don't care how he characterizes
16 it. If he's asking us to identify cases so
17 that he can study the law and find out what
18 happened in a particular case, I call that
19 legal research. And we're not doing that for
20 him.

21 If he wants to ask us for factual
22 information and interrogatories, he's free to

1 do so. But the Bureau does not perform legal
2 research on behalf of private counsel. Never
3 have. And I think this request is just
4 totally unreasonable.

5 ADMIN. JUDGE SIPPEL: Well, I
6 agree with you it's unreasonable insofar as it
7 was broadly stated. But with this little
8 refinement, I question whether or not it would
9 be that unreasonable.

10 And I don't want to speak beyond
11 what I've said. I mean, I don't want to get
12 into an area that the Bureau counsel may not
13 want to get into. So I'm just going to leave
14 it at that.

15 I mean, everybody's saying that
16 they're cooperative around here. And if
17 that's the way you cooperate, so be it. I
18 can't order it. I will not order it.

19 So you can keep talking about it,
20 but I believe that's the only thing that was
21 really official -- oh, the other one was the
22 official notice. "Amateur radio is a hobby."

1 I'm reading now from a Bureau answer, I
2 believe.

3 "Amateur radio is a hobby which
4 throughout its long history has been
5 attractive to individuals of all ages,
6 particularly youngsters."

7 Now does the Bureau intend to
8 offer proof on that?

9 MR. SCHONMAN: It's not a matter
10 in issue, Your Honor. It's not one of the
11 designated issues.

12 ADMIN. JUDGE SIPPEL: Okay. Mr.
13 Marshall, where does that language come from
14 then? Why --

15 MR. SCHONMAN: It comes from the
16 designation order.

17 ADMIN. JUDGE SIPPEL: Well, then
18 okay. Then that's --

19 MR. SCHONMAN: But it's not a
20 designated issue that Your Honor has been
21 directed by the Commission to decide.

22 ADMIN. JUDGE SIPPEL: Well, if

1 you're going to argue for finding based on
2 that type of language, I'm going to be
3 troubled.

4 MR. SCHONMAN: Your Honor, we
5 haven't drafted our findings yet. The
6 evidence hasn't come in yet.

7 We're going to present the
8 evidence on the issues that have been
9 designated. But the underlying issue of
10 whether amateur radio is popular or not
11 popular to children is not a matter in issue.

12 ADMIN. JUDGE SIPPEL: Is it
13 irrelevant?

14 MR. SCHONMAN: It was relevant for
15 placing this matter in hearing in the first
16 place to determine whether Mr. Titus is
17 qualified to be a licensee.

18 ADMIN. JUDGE SIPPEL: Well, it
19 sounds like you're trying to have it both
20 ways. I mean, if you say that it's not an
21 issue, then it's got to be irrelevant. The
22 only thing that's relevant is what's at issue.

1 But there can be fact issues
2 outside the designated issues which would
3 support -- facts which would support some
4 finding that you're seeking under the
5 designated issues. If this isn't anything
6 like that, in other words, if this could --
7 and I'm not going to strike anything out of
8 the hearing designation order. But
9 theoretically, if it were stricken from the
10 hearing designation order, or if it were never
11 included in the designation order, it wouldn't
12 make a darn bit of difference.

13 MR. SCHONMAN: This case would
14 still be in hearing.

15 ADMIN. JUDGE SIPPEL: Yes. That's
16 basically what you're saying.

17 MR. SCHONMAN: I'm not saying that
18 it's irrelevant. I'm saying that it's not a
19 matter to be tested. That underlying matter
20 of whether it's popular is not a matter to be
21 tested at the hearing.

22 ADMIN. JUDGE SIPPEL: Well, then

1 I'm -- sitting here today I'm not prepared to
2 make any findings with respect to that.

3 MR. SCHONMAN: Mr. Titus can argue
4 in his proposed findings and fact. He can
5 argue the law, and he can argue the facts.

6 The facts will be as they're
7 presented at the hearing. And the Bureau will
8 argue the facts as well, and will present the
9 law.

10 If he wants to argue that as a
11 matter of law this is not popular, he can do
12 that if he wants. That's what he would want
13 you to decide.

14 ADMIN. JUDGE SIPPEL: All I'm
15 saying is that if you ask for findings that
16 this is attractive -- particularly to
17 youngsters, if that's what you're going to ask
18 for in a finding, without evidence of that or
19 without giving Mr. Marshall notice, an
20 opportunity to rebut that or somehow or other
21 raise serious questions about it, I don't see
22 how I could make a finding on that.

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1 And you're saying it's not part of
2 the issues anyway. Well, anyway. I'm not
3 going to keep saying it.

4 I'm trying to give you a heads up.
5 All right? I'm trying to give you some kind
6 of notice here.

7 MR. SCHONMAN: Mr. Titus requested
8 in his interrogatories for us to provide
9 information. I believe in our response, we
10 provided him with a number of sources.

11 ADMIN. JUDGE SIPPEL: Well, then I
12 see the --

13 MR. SCHONMAN: So we --

14 ADMIN. JUDGE SIPPEL: There's a
15 website here, www.kidshamradio.com, and a
16 couple of others.

17 MR. SCHONMAN: So we've answered
18 his question. I don't know what more he
19 wants.

20 MR. MARSHALL: Well, Your Honor,
21 if that's the extent of the evidence that they
22 would present at the hearing supporting the

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1 idea that the amateur radio service is
2 particularly attractive to children, then that
3 I'll take as a full response. I just don't
4 want to find that at the hearing we're facing
5 more evidence than what they've put in the
6 interrogatory response on this point.

7 ADMIN. JUDGE SIPPEL: All right.
8 As I read the -- did you want to --

9 MR. SCHONMAN: No, sir.

10 ADMIN. JUDGE SIPPEL: As I see --
11 I'm going to read again into the record from
12 the Bureau's response on interrogatory #9,
13 which was, "Identify all facts which the
14 Enforcement Bureau believes supports
15 contention that amateur radio service is
16 particularly attractive to children." And
17 that comes out of the hearing designation,
18 that language.

19 And here is, in addition to what I
20 had read earlier, the Bureau's response was,
21 "The matter of amateur radio's appeal to
22 children is not an issue in this proceeding,

1 which the presiding judge has been directed to
2 resolve. And the Bureau objects to any effort
3 to place such a matter in dispute."

4 So I take it from that, you're
5 trying to say that it shouldn't be in dispute
6 because it's established by the hearing
7 designation order?

8 MR. SCHONMAN: The Commission by
9 delegated authority has spoken.

10 ADMIN. JUDGE SIPPEL: Has declared
11 that to be a finding of fact and conclusion of
12 law? And it goes no further?

13 MR. SCHONMAN: Your Honor, if Mr.
14 Titus wants to enlarge the issues to include
15 an inquiry as to the factual basis of that,
16 he's free to do so. I don't think he has a
17 basis for doing it at this time. But I don't
18 think that that fact is a matter in issue.

19 ADMIN. JUDGE SIPPEL: Yes. But
20 that's not really answering the question.

21 You're saying it's not a matter an
22 issue to resolve. The inference from that

1 answer is that it's already established. So
2 why bother with it?

3 MR. SCHONMAN: That's a matter
4 that you could take official notice of.

5 ADMIN. JUDGE SIPPEL: How?

6 MR. SCHONMAN: You're asking me to
7 testify now.

8 ADMIN. JUDGE SIPPEL: No, I'm
9 sorry.

10 MR. SCHONMAN: I mean, amateur
11 radio has been around since probably before
12 1934. It's been a hobby for years. It's been
13 enthusiastically received by youngsters for
14 over 60 years. Mr. Titus, I understand got
15 his amateur radio license as a youngster.

16 ADMIN. JUDGE SIPPEL: Would you
17 ask him that question if he were on the stand?

18 MR. SCHONMAN: Your Honor, I don't
19 know what questions I'd be asking him on the
20 stand.

21 ADMIN. JUDGE SIPPEL: I'm not
22 asking you to start. That particular

1 question, I think I might be inclined to ask
2 it if you won't. I mean --

3 MR. SCHONMAN: We could ask him
4 that question.

5 ADMIN. JUDGE SIPPEL: Well, I'm
6 not asking you to do it on my behalf. I'm
7 simply saying that it's a logical thing to do.
8 How long have you been doing this amateur
9 radio? How did you get interested in it? All
10 that stuff would be interesting.

11 MR. SCHONMAN: We would ask him.

12 ADMIN. JUDGE SIPPEL: I mean, why
13 are we playing cat and mouse on this?

14 Well, this is what you're saying,
15 and you go on to say, "of which the presiding
16 judge may take official notice, that the
17 amateur radio is indeed a hobby which
18 throughout its long history has been
19 attractive to individuals of all ages." I
20 agree with that part of it, "particularly
21 youngsters." I don't know that.

22 The only person I know that's a

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1 ham operator is my automobile mechanic. And
2 he's as grey as I am. That's all I know about
3 this stuff.

4 I agree with your statement up
5 until the statement where you said,
6 "particularly youngsters," because his problem
7 is that he can't get a license because of what
8 he's done with kids. Right?

9 MR. SCHONMAN: He can't retain his
10 license.

11 ADMIN. JUDGE SIPPEL: All right.
12 Can't retain his license.

13 So, I mean that seems to me that
14 Mr. Marshall has a good reason to be concerned
15 about that.

16 MR. SCHONMAN: Your Honor, if
17 there was even one child who had a ham radio
18 license, this case would still be in hearing.
19 If Mr. Titus had the capacity to use his radio
20 to engage youngsters in conversations that
21 might lead to unlawful behavior, this case
22 would be in hearing.

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1 ADMIN. JUDGE SIPPEL: All right.

2 MR. SCHONMAN: The fact that it's
3 particularly attractive to children, or just
4 partially attractive to children, makes no
5 difference as to whether this case is in
6 hearing.

7 It's not an issue I think that we
8 have to explore. But if Your Honor believes
9 it is --

10 ADMIN. JUDGE SIPPEL: No.

11 MR. SCHONMAN: -- then we will
12 present additional evidence in support of
13 that.

14 ADMIN. JUDGE SIPPEL: What I'm
15 asking you is if it's not a matter that's been
16 stated in the designated issues and is not a
17 matter to be litigated, then why would you be
18 seeking to have findings on it based on the
19 fact that it's just representation? Now, if
20 you're not going to ask for findings on that,
21 then there's no problem.

22 MR. SCHONMAN: First of all,

1 without the evidence coming in, I don't know
2 how we're going to come out on this case.

3 ADMIN. JUDGE SIPPEL: I realize
4 that.

5 MR. SCHONMAN: We may find that he
6 is qualified after all the evidence comes in.
7 I don't know. I would never make a judgment
8 in advance of the trial on that.

9 But the issue is whether he's
10 qualified to retain his license based on his
11 status as a convicted sex offender. Whether
12 or not there's even one child or a thousand
13 children in the Seattle area or elsewhere
14 around the world with whom he might speak with
15 his amateur radio really makes no difference.

16 ADMIN. JUDGE SIPPEL: Well, then
17 why is it put that way in the hearing
18 designation order that it's particularly
19 attractive to youngsters?

20 MR. SCHONMAN: Because it is a
21 reference to why the Commission thinks this
22 case is important enough to place his license

1 in jeopardy.

2 ADMIN. JUDGE SIPPEL: But you just
3 said that if it was only one child and the
4 fact that he was a child himself when he
5 started it.

6 You seem to be going back and
7 forth on this. And all I'm trying to do is
8 put you on notice that if you're going to look
9 for that as a finding, I'm not going to take
10 official notice of it sitting here today. Now
11 if you find something else to convince me with
12 it -- look, maybe I'm tipping my hat more than
13 I should -- my hand rather.

14 MR. MARSHALL: Your Honor, may I
15 speak?

16 ADMIN. JUDGE SIPPEL: Go ahead,
17 Mr. Marshall.

18 MR. MARSHALL: I would like to
19 suggest -- it's apparent from this discussion
20 that the Enforcement Bureau does not intend to
21 offer evidence on this point. And if they
22 don't offer evidence on this point, then I

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1 don't think they're going to be entitled to a
2 finding on the point.

3 And I would suggest that if they
4 would strike the phrase, "particularly
5 attractive to children," from the order that
6 we then don't have to worry about this thing.

7 ADMIN. JUDGE SIPPEL: No. That's
8 not going to happen. I mean, the law is very
9 clear, and it's very well established. Unless
10 there's exceptionally good reason shown, I
11 can't touch those hearing designation orders.

12 I mean, that doesn't mean that
13 everything stated in there is a finding of
14 fact and conclusion of law, if you follow what
15 I'm saying.

16 MR. MARSHALL: I do, Your Honor.

17 ADMIN. JUDGE SIPPEL: Okay. I
18 don't think -- I'm sorry. I think I'm beating
19 on a dead horse.

20 Let's let me get this order out.
21 You all have the dates. There's a lot of work
22 to do.

1 I appreciate the fact that you
2 have addressed yourself to these things. And
3 Mr. Brown is also not with your firm any
4 longer. Is that right?

5 MR. MARSHALL: I'm afraid that's
6 correct, Your Honor.

7 ADMIN. JUDGE SIPPEL: So you are
8 put in a disadvantage to that extent that you
9 have to pick up the pieces from Mr. Brown who
10 was doing an excellent job. So there
11 shouldn't be any problem with that. But
12 there's a lot of circumstances to why this
13 case has not moved along as rapidly as it
14 should. And I'm not going to criticize
15 anybody for having delayed it.

16 But let's see if we can take a
17 slightly different turn on it from here on
18 out.

19 Anybody else have anything more?

20 MR. SCHONMAN: No, sir.

21 MR. MARSHALL: No, Your Honor.

22 ADMIN. JUDGE SIPPEL: Thank you

1 very much. We're in recess then.

2 And you'll get my order in a day

3 or so.

4 Thank you.

5 (Whereupon, at 11:36 a.m., the

6 hearing was adjourned.)

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Name of Hearing

EB DOCKET NO. 07-13

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

SEPTEMBER 19, 2007

Date of Hearing

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